

First Regular Session 111th General Assembly (1999)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1998 General Assembly.

## HOUSE ENROLLED ACT No. 1509

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AN ACT to amend the Indiana Code concerning state offices and administration.

*Be it enacted by the General Assembly of the State of Indiana:*

SECTION 1. IC 4-13.5-1.5-10.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 10.5. As used in this chapter, "energy cost savings contract" has the meaning set forth in IC 4-13.6-8-2.**

SECTION 2. IC 4-13.5-1.5-10.6 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 10.6. As used in this chapter, "governmental body" has the meaning set forth in IC 4-13.6-1-9.**

SECTION 3. IC 4-13.5-1.5-10.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 10.7. As used in this chapter, "qualified energy savings project" has the meaning set forth in IC 4-13.6-8-3.**

SECTION 4. IC 4-13.5-1.5-10.8 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 10.8. As used in this chapter, "qualified provider" has the meaning set forth in IC 4-13.6-8-4.**

SECTION 5. IC 4-13.5-1.5-14 IS AMENDED TO READ AS

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FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 14. The amount of state appropriations available to a ~~state institution~~ **governmental body** may not be reduced because of energy cost savings and operational cost savings realized from a qualified energy savings project and an energy cost savings contract.

SECTION 6. IC 4-13.5-1.5-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 16. The general assembly:

- (1) finds that ~~the state needs~~ **governmental bodies need** to save energy at ~~state institutions~~ **and reduce operating costs**; and
- (2) authorizes the commission to enter into energy cost savings contracts with qualified providers under this article **and IC 4-13.6-8.**

SECTION 7. IC 4-13.6-4-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 4. (a) If, after its examination, the board finds that an applicant possesses the qualifications prescribed by this chapter and by its rules, the board shall issue the applicant a certificate of qualification. A certificate of qualification issued under this chapter is valid for a period of ~~fifteen (15)~~ **twenty-seven (27)** months from the date of its issuance, unless revoked by the board for cause.

(b) Except for restrictions as to the amount or class of work or services that the board may place in the certificate, the certificate of qualification authorizes a contractor to bid on all proposed public works contracts and authorizes a person offering to perform professional services to perform those services.

**(c) A person that holds a certificate of qualification shall notify the board of any material changes in information in the application submitted to the board.**

~~(c)~~ **(d)** The board may revoke a certificate of qualification after it notifies the holder of the certificate and provides the holder with an opportunity to be heard on the proposed revocation. The notice must be in writing and must state the grounds of the proposed revocation.

SECTION 8. IC 4-13.6-4-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 10. (a) A contractor having a contract with the division for a public works project may enter into a subcontract with a value of one hundred ~~fifty~~ **fifty** thousand dollars ~~(\$100,000)~~ **(\$150,000)** or more, involving the performance of any part of the public work upon which the contractor may be engaged only if the subcontractor has been properly qualified under the terms of this chapter for the work subcontracted.

(b) A contractor that enters into a public works contract with an



estimated cost of one hundred **fifty** thousand dollars ~~(\$100,000)~~ **(\$150,000)** or more must complete at least twenty percent (20%) of the work (measured in dollars of the total contract price) with its own forces. The director may determine whether a contractor has completed at least twenty percent (20%) of the work with its own forces, and this determination is final and conclusive.

(c) The director may find a contractor violating this section to be in breach of the contract and may employ any legal remedies or administrative remedies that the department may prescribe by rule or in the contract documents. The division may develop contract provisions that assure compliance by contractors with this section and provide for remedies if a contractor breaches these provisions.

SECTION 9. IC 4-13.6-8 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]:

**Chapter 8. Energy Cost Savings Contracts**

**Sec. 1.** As used in this chapter, "commission" refers to the state office building commission established by IC 4-13.5-1-1.5.

**Sec. 2.** As used in this chapter, "energy cost savings contract" means a contract between:

- (1) the state or the commission; and
- (2) a qualified provider;

for the implementation of at least one (1) qualified energy savings project and related measures for a governmental body.

**Sec. 3.** As used in this chapter, "qualified energy savings project" means a facility alteration designed to reduce energy consumption costs or other operating costs. The term includes the following:

- (1) Providing insulation of the facility and systems within the facility.
- (2) Installing or providing for window and door systems, including:
  - (A) storm windows and storm doors;
  - (B) caulking or weatherstripping;
  - (C) multi-glazed windows and doors;
  - (D) heat absorbing or heat reflective glazed and coated windows and doors;
  - (E) additional glazing;
  - (F) reduction in glass area; and
  - (G) other modifications that reduce energy consumption.
- (3) Installing automatic energy control systems.
- (4) Modifying or replacing heating, ventilating, or air



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conditioning systems.

(5) Unless an increase in illumination is necessary to conform to Indiana laws or rules or local ordinances, modifying or replacing lighting fixtures to increase the energy efficiency of the lighting system without increasing the overall illumination of a facility.

(6) Providing for other measures that reduce energy consumption or reduce operating costs.

**Sec. 4.** As used in this chapter, "qualified provider" means a person experienced in the design, implementation, and installation of energy and operational cost savings systems.

**Sec. 5.** (a) At the request of a governmental body, the department, in consultation with the governmental body, may do the following:

(1) Solicit proposals from qualified providers for an energy cost savings contract.

(2) Review proposals and contract with a qualified provider.

(b) An energy cost savings contract may cover more than one (1) governmental body.

**Sec. 6.** An energy cost savings contract may do any of the following:

(1) Provide that energy cost savings are guaranteed by the qualified provider to the extent necessary to make payments for the qualified energy savings project.

(2) Include contracts for building operation programs, maintenance, and management or similar agreements with the qualified provider to reduce energy or operational costs.

**Sec. 7.** (a) After reviewing the proposals submitted and after receiving a recommendation from the budget committee, the department may approve an energy cost savings contract with a qualified provider that best meets the needs of the governmental body if the department reasonably expects the cost of the qualified energy savings project recommended in the proposal would not exceed the amount to be saved in:

(1) energy costs;

(2) operational costs; or

(3) both energy and operational costs;

not later than ten (10) years after the date installation is completed if the recommendations in the proposal are followed.

(b) An energy cost savings contract must include a guarantee from the qualified provider to the state that:

(1) energy cost savings;



(2) operational cost savings; or  
 (3) both energy and operational cost savings;  
 will meet or exceed the cost of the qualified energy project not later than ten (10) years after the date installation is completed.

Sec. 8. (a) An agreement or a contract under this chapter is subject to IC 5-16-7.

(b) The contractor and each subcontractor engaged in installing energy conservation measures under a guaranteed energy savings contract shall keep full and accurate records indicating the names, classifications, and work performed by each worker employed by the respective contractor and subcontractor in connection with the work and an accurate record of the number of hours worked by each worker and the actual wages paid.

(c) The payroll records required to be kept under this section must be open to inspection by an authorized representative of the department and the department of labor.

Sec. 9. The amount of state appropriations available to a governmental body may not be reduced because of energy cost savings and operational cost savings realized from a qualified energy savings project and an energy cost savings contract.

Sec. 10. The department may recommend to the governor that an energy cost savings contract be entered into by the state office building commission under IC 4-13.5-1.5.

SECTION 10. IC 36-1-12.5-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 3. (a) As used in this chapter, "qualified provider" means **the following**:

(1) **Before July 1, 1999, the term means a person that satisfies both of the following:**

(1+) (A) **The person** is experienced in the design, implementation, and installation of energy conservation measures. ~~and~~

(2+) (B) **The person** submits to the school corporation or political subdivision a performance bond to ensure the qualified provider's faithful performance of the qualified provider's obligations over the term of the guaranteed energy savings contract.

(2) **After June 30, 1999, the term means a person that satisfies all of the following:**

(A) **The person** is experienced in the design, implementation, and installation of energy conservation measures.

(B) **The person** is certified and meets the requirements of

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**IC 4-13.6-4.** The person's response to the request for proposals must include a copy of the person's certificate of qualification issued under IC 4-13.6-4.

**(C)** The person provides energy conservation engineering services by a professional engineer licensed under IC 25-31 who is under the person's direct employment and supervision. The person's response to the request for proposals must include the license number of each professional engineer employed by the person to satisfy the requirement of this clause.

**(D)** The person provides:

- (i) monitoring for the facility performance guarantee; and
- (ii) service personnel under the person's direct employment and supervision;

for the duration of the contract's guarantee.

**(E)** The person performs at least twenty percent (20%) of the work (measured in dollars of the total contract price) with its own workforce.

**(F)** The person submits to the school corporation or political subdivision a performance bond to ensure the qualified provider's faithful performance of the qualified provider's obligations over the term of the guaranteed energy savings contract.

**(b)** For purposes of a guaranteed energy savings contract entered into before July 1, 1999, a person who was a qualified provider under subsection (a)(1) at the time the contract was entered into remains a qualified provider for that contract after June 30, 1999. If the person enters into a guaranteed energy savings contract after June 30, 1999, the person must satisfy the requirements of subsection (a)(2) to be considered a qualified provider.

SECTION 11. IC 36-1-12.5-5.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 5.3.** (a) This section applies only to a guaranteed energy savings contract entered into after June 30, 1999.

**(b)** A qualified provider may enter into a subcontract:

- (1) with a value of more than one hundred fifty thousand dollars (\$150,000); and
- (2) for the performance of any part of a guaranteed energy savings contract;



**only if the subcontractor is certified under IC 4-13.6-4.**

SECTION 12. THE FOLLOWING ARE REPEALED [EFFECTIVE JULY 1, 1999]: IC 4-13.5-1.5-1; IC 4-13.5-1.5-2; IC 4-13.5-1.5-3; IC 4-13.5-1.5-4; IC 4-13.5-1.5-5; IC 4-13.5-1.5-6; IC 4-13.5-1.5-7; IC 4-13.5-1.5-8; IC 4-13.5-1.5-9; IC 4-13.5-1.5-10.

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